APPEAL NO. 010201

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). On December 5, 2000, a hearing was held. The hearing officer determined that: (1) the appellant/cross-respondent (carrier) did not waive its right to dispute the compensability of the respondent/cross-appellant's (claimant) lumbar, right carpal tunnel syndrome, bilateral cubital tunnel syndrome, bilateral ulnar nerve, chronic pain syndrome, sub-occipital headaches, corneal abrasion, major depressive disorder, generalized anxiety disorder, Barrett's esophagus, gastric ulcer, chronic gastritis, dysphagia, refractory gastroesophygeal reflux disease, esophligitis and stricture, and status post fundoplication; (2) the claimant's compensable injury includes Barrett's esophagus, gastric ulcer, chronic gastritis, dysphagia, refractory gastroesophygeal reflux disease, esophligitis and stricture, and status post fundoplication, but does not include the other conditions in dispute; and (3) the claimant is not entitled to supplemental income benefits (SIBs) for the sixth compensable quarter, beginning May 28, 2000, and ending August 26, 2000.

DECISION

Affirmed.

The hearing officer did not err in determining that the carrier did not waive its right to dispute the compensability of the claimant's conditions described above. Section 409.021(c) provides that if an insurance carrier does not contest the compensability of an injury on or before the 60th day after the date on which the carrier is notified of the injury, the carrier waives its right to contest compensability. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 124.3(c) (Rule 124.3(c)), effective March 13, 2000, provides, in pertinent part, that Section 409.021 and the implementing provisions of this statute in Rule 124.3(a) "do not apply to disputes of extent of injury." Rule 124.3(c) further provides that if a carrier receives a medical bill and wishes to dispute liability for treatment, it shall file a notice of dispute not later than the earlier of the date the medical bill is denied or the due date for paying or denying the medical bill. Notwithstanding, the preamble to the rule provides that failure to timely dispute the extent of injury pursuant to Rule 124.3(c) is a compliance issue and does not create liability for the claimed injuries. Therefore, the hearing officer properly applied Rule 124.3 in determining that the carrier did not waive its right to dispute compensability with regard to the conditions described above.

The hearing officer did not err in determining that the compensable injury includes Barrett's esophagus, gastric ulcer, chronic gastritis, dysphagia, refractory gastroesophygeal reflux disease, esophligitis and stricture, and status post fundoplication, but does not include the other conditions in dispute. Whether the compensable injury included the conditions in dispute was a question of fact for the hearing officer to decide. Where the matter of the causation of the claimed injury is beyond common knowledge or experience, expert evidence to a reasonable degree of medical probability is required. Schaefer v. Texas Employers' Insurance Association, 612 S.W.2d 199 (Tex. 1980); Houston General

Insurance Company v. Pegues, 514 S.W.2d 492 (Tex. Civ. App.-Texarkana 1974, writ ref'd n.r.e.). The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). The Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find them so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). The evidence and lack of evidence in the medical records sufficiently supports the challenged determinations.

The hearing officer did not err in determining that the claimant is not entitled to supplemental income benefits for the sixth compensable quarter. The claimant asserts that she had no ability to work and, therefore, was not required to make a job search during the qualifying period. Sections 408.142 and 408.143 provide, in pertinent part, that an employee continues to be entitled to SIBs after the first compensable quarter if the employee has in good faith sought employment commensurate with her ability to work. Rule 130.102(d)(4) provides that an injured employee has made a good faith effort to obtain employment commensurate with her ability to work, if the employee has been unable to perform any type of work in any capacity, has provided a narrative report from a doctor which specifically explains how the injury causes a total inability to work, and no other records show that the injured employee is able to return to work. The hearing officer's determination that the claimant is not entitled to SIBs for the sixth compensable quarter is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, *supra*.

The decision and order of the hearing officer are affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Robert W. Potts
Appeals Judge